

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF BATAVIA, NEW YORK;
TOWN OF BATAVIA, NEW YORK; NL
INDUSTRIES, INC.; AGWAY, INC.;
BATAVIA METAL PRODUCTS
CORPORATION; BATAVIA
NEWSPAPERS CORPORATION D/B/A
BATAVIA DAILY NEWS; BYRON
ENTERPRISES, INC.; CHAPIN
MANUFACTURING, INC.; EATON
CORPORATION; GENESEE VALLEY
BOARD OF COOPERATIVE
EDUCATIONAL SERVICES; GRAHAM
CORPORATION; GTE OPERATIONS
SUPPORT, INCORPORATED; MARK IV
INDUSTRIES, INC.; NEW YORK
STATE DEPARTMENT OF
CORRECTIONAL FACILITIES,
ATTICA CORRECTIONAL FACILITY;
NIAGARA MOHAWK POWER
CORPORATION; P/W. MINOR & SON,
INC.; THE SHERWIN WILLIAMS
COMPANY; UNISYS CORPORATION;
U.S. CHROME CORPORATION OF NEW
YORK; AND WASTE MANAGEMENT OF
NEW YORK, L.L.C.,

Defendants.

Civil Action No.

00 CV 0838E (SR)

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WESTERN DISTRICT OF NEW YORK
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00 CV 0838E (SR)

COMPLAINT

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COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of and on behalf of the Administrator of the United States Environmental Protection Agency ("EPA") and the Secretary of the United States Department of the Interior ("DOI"), files this complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action brought by the United States pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act as amended ("CERCLA"), 42 U.S.C. § 9607(a), to recover the unreimbursed response costs they have incurred in connection with the Batavia Landfill Superfund Site located in the Town of Batavia, Genesee County, New York ("Site"), together with accrued interest, and a declaratory judgment that the Defendants are liable to the United States for all future response costs incurred by the United States relating to the Site.

2. In addition, pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), the United States seeks injunctive relief to remedy an imminent and substantial threat to human health and the

environment arising out of the release or threatened release of hazardous substances into the environment at the Site.

3. The United States also seeks, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover damages for injury to, destruction of, or loss of natural resources resulting from the release of hazardous substances at the Site, and the reasonable costs of assessment relating thereto.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to Sections 106(a), 107(a), and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a), and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

5. Venue is proper in this judicial district pursuant to Sections 106(a), 107(a), and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a), and 9613(b), and 28 U.S.C. § 1391(b) and (c), because the claims arose and the threatened and actual release of hazardous substances and resulting damage occurred in this judicial district, and because the Site is located in this judicial district.

DEFENDANTS

6. Each of the Defendants is a person withing the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

7. The Town of Batavia, New York ("Town") is a municipal

corporation of the State of New York.

8. The City of Batavia, New York ("City") is a municipal corporation of the State of New York.

9. N L Industries, Inc. is incorporated in the State of New Jersey. Upon information and belief, N L Industries, Inc., through its Doehler-Jarvis Division, was doing business in this judicial district.

10. Agway, Inc. is incorporated in the State of Delaware. At times material hereto, Agway, Inc. was doing business in this judicial district.

11. Batavia Metal Products Corporation is incorporated in the State of New York. At times material hereto, Batavia Metal Products Corporation was doing business in this judicial district.

12. Batavia Newspapers Corporation d/b/a Batavia Daily News is incorporated in the State of New York. At times material hereto, Batavia Newspapers Corporation d/b/a Batavia Daily News was doing business in this judicial district.

13. Byron Enterprises, Inc. is incorporated in the State of New York. At times material hereto, Byron Enterprises, Inc. was doing business in this judicial district.

14. Chapin Manufacturing, Inc. is incorporated in the State of New York. Upon information and belief, Chapin Manufacturing,

Inc. is a successor to R.E. Chapin Manufacturing Works. At times material hereto, Chapin Manufacturing, Inc. and/or R.E. Chapin Manufacturing Works were doing business in this judicial district.

15. Eaton Corporation is incorporated in the State of Ohio. At times material hereto, Eaton Corporation was doing business in this judicial district.

16. The Genesee Valley Board of Cooperative Educational Services is a public agency in the State of New York.

17. Graham Corporation is incorporated in the State of New York. Upon information and belief, Graham Corporation is a successor to Graham Manufacturing Co., Inc. and Best Machinery. At times material hereto, Graham Corporation, Graham Manufacturing Co., Inc. and/or Best Machinery were doing business in this judicial district.

18. GTE Operations Support Incorporated is incorporated in the State of Delaware. Upon information and belief, GTE Operations Support Incorporated is a successor to GTE Products Corporation. At times material hereto, GTE Products Corporation and/or GTE Operations Support Incorporated were doing business in this judicial district.

19. Mark IV Industries, Inc. is incorporated in the State of Delaware. Upon information and belief, Mark IV Industries,

Inc. is a successor to E.N. Rowell Co., Inc. and Glar-Ban Corporation. At times material hereto, Mark IV Industries, Inc., E.N. Rowell Co., Inc. and/or Glar-Ban Corporation were doing business in this judicial district.

20. New York State Department of Correctional Services, Attica Correctional Facility is a department of the State of New York.

21. Niagara Mohawk Power Corporation is incorporated in the State of New York. At times material hereto, Niagara Mohawk Power Corporation was doing business in this judicial district.

22. P.W. Minor & Son, Inc. is incorporated in the State of New York. At times material hereto, P.W. Minor & Son, Inc. was doing business in this judicial district.

23. The Sherwin Williams Company is incorporated in the State of Ohio. At times material hereto, The Sherwin Williams Company was doing business in this judicial district.

24. Unisys Corporation is incorporated in the State of Delaware. At times material hereto, Unisys Corporation was doing business in this judicial district.

25. U.S. Chrome Corporation of New York is incorporated in the State of New York. At times material hereto, U.S. Chrome Corporation was doing business in this judicial district.

26. Waste Management of New York, L.L.C. is incorporated in

the State of Delaware. Upon information and belief, Waste Management of New York, L.L.C. is a successor to Waste Management of New York, Inc., Waste Management of New Jersey, Inc., Hoff Brothers and Bestway. At times material hereto, Waste Management of New York, L.L.C., Waste Management of New York, Inc., Waste Management of New Jersey, Inc., Hoff Brothers and/or Bestway were doing business in this judicial district.

THE SITE

27. The Site is a former co-disposal landfill located in the Town of Batavia, Genesee County, New York.

28. The Town of Batavia has owned the Site since 1968. The City of Batavia and the Town of Batavia operated the Site from at least 1968 through 1980.

29. On September 1, 1983, EPA placed the Site on the National Priorities List ("NPL"), which is a ranking of hazardous waste sites requiring remediation promulgated by EPA pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. § 9605(a)(8)(B), and codified at 40 C.F.R. Part 300, Appendix B.

30. In August 1993, a Remedial Investigation Report for the Site was completed, and in September 1994, a Feasibility Study for the Site was completed, pursuant to the National Contingency Plan, 40 C.F.R. Part 300.

31. On August 8, 1994, EPA published notice of the

Feasibility Study and of a proposed plan for Remedial Action at the Site in a major local newspaper of general circulation, pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617.

32. Following an opportunity for written and oral comments on the proposed plan for Remedial Action, on June 6, 1995, EPA executed a Record of Decision ("ROD") with the State of New York's concurrence.

33. On September 20, 1999, EPA issued an Explanation of Significant Differences ("ESD") which modified the ROD and contemporaneously published notice of the ESD in a major local newspaper of general circulation.

GENERAL ALLEGATIONS

34. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

35. Between 1968 and 1980, industrial wastes including "hazardous substances" defined pursuant to Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), were sent to the Site for disposal. Substances defined as "hazardous substances" pursuant to Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been detected at the Site. These substances include, but are not limited to, nickel, lead, magnesium, barium, chromium, methyl chloride, arsenic and 1,1,1-trichloroethane.

36. There have been and continue to be "releases" or

"threatened releases" of "hazardous substances" within the meaning of Sections 101(14) and (22), and 107(a) of CERCLA, 42 U.S.C. §§ 9601(14) and (22), and 9607(a), into the environment at and from the Site.

37. The Town of Batavia and the City of Batavia are each a person who owned and/or operated the Site now and/or at the time of disposal of hazardous substances at the Site, within the meaning of Section 107(a)(1) and/or (2) of CERCLA, 42 U.S.C. § 9607(a)(1), (2).

38. Each of the other Defendants is a person (or is a successor to a person) who arranged for disposal or treatment or arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by that Defendant at the Site, or who accepted hazardous substances for transport to the Site as selected by such person, within the meaning of Section 107(a)(3) and/or (4) of CERCLA, 42 U.S.C. § 9607(a)(3), (4).

FIRST CLAIM FOR RELIEF

39. Paragraphs 1 through 38 above are realleged and incorporated herein by reference.

40. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

(1) the owner and operator of a vessel or a facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity at any facility or incineration vessel owned or operated by another party and containing such hazardous substances, and

(4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for-

(A) all costs of removal or remedial action incurred by the United States Government or a State or Indian tribe not inconsistent with the national contingency plan;

41. The releases or threatened releases of hazardous substances at the Site have caused the United States to incur response costs, as defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25). The United States will continue to incur response costs in connection with the Site in the future.

42. The costs of the response actions taken and to be taken by the United States in connection with the Site are not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

43. Pursuant to Section 107(a) of CERCLA, 42 U.S.C.

§ 9607(a), each of Defendants is liable to the United States, jointly and severally, for the response costs incurred and to be incurred by the United States in connection with the Site.

44. Section 113(g)(2) of CERCLA, 42 U.S.C. 9613(g)(2), provides, in relevant part, that "the Court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages."

SECOND CLAIM FOR RELIEF

45. Paragraphs 1 through 38 above are realleged and incorporated herein by reference.

46. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), provides, in pertinent part:

In addition to any other action taken by a State or local government, when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

47. The President, through his delegate, has determined that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of actual

and/or threatened releases of hazardous substances at and from the Site.

48. The Defendants are liable to perform the remedial work set forth in the ROD and ESD, in order to abate the conditions at the Site that may present an imminent and substantial endangerment to the public health or welfare or the environment.

THIRD CLAIM FOR RELIEF

49. Paragraphs 1 through 38 above are realleged and incorporated herein by reference.

50. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

- (1) the owner and operator of a vessel or a facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity at any facility or incineration vessel owned or operated by another party and containing such hazardous substances, and
- (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for—

(C) damages for injury to, destruction of, or loss

of natural resources, including the reasonable cost of assessing such injury, destruction, or loss resulting from such a release;

51. By designation of the President, DOI is the trustee of a variety of natural resources and their supporting ecosystems, including, but not limited to, migratory birds, certain anadromous fish, endangered species and marine mammals; federally owned lands and minerals, and certain federally managed water resources. Exec. Order No. 12580 as amended by Exec. Order 12777; 40 C.F.R. § 300.600.

52. The United States, through DOI, is a trustee for certain natural resources in and around the Site.

53. The release or threatened release of hazardous substances at the Site has resulted in damages for injury to, destruction of, or loss of natural resources at the Site that are under the trusteeship of DOI within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

54. Pursuant to Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C), Defendants are jointly and severally liable to the United States for all damages for injury to, destruction of, loss of, or loss of use of, natural resources under the trusteeship of DOI, including the reasonable costs of assessing the damage resulting from the releases of hazardous substances at

and from the Site.

PRAYER FOR RELIEF

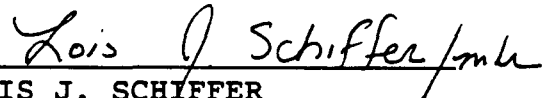
WHEREFORE, Plaintiff United States of America respectfully requests that this Court:

1. Enter judgment that each of the defendants is jointly and severally liable to the United States under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all unreimbursed response costs that have been incurred by the United States in connection with the Site, and order defendants to pay appropriate interest and all costs, legal fees, and expenses associated with this action;
2. Enter a declaratory judgment pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that each of the defendants is jointly and severally liable to the United States under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all future response costs incurred by the United States in connection with the Site;
3. Order Defendants to perform the work required to implement the ROD and ESD in order to abate the conditions at the Site that may present an imminent and substantial endangerment to the public health or welfare or the environment;
4. Enter judgment that, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Defendants are jointly and severally liable for all damages for injury to, destruction of, or loss of

natural resources resulting from releases of hazardous substances at and from the Site that are within the trusteeship of the United States, as well as for all reasonable costs incurred or to be incurred by the United States in assessing such injury to, destruction of, or loss of natural resources, including enforcement costs, and order Defendants to pay all such damages and costs, together with appropriate interest thereon and all costs, legal fees, and expenses associated with this action; and

5. Grant such other relief as may be just and proper.

Respectfully submitted,



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02-1992-0209 Batavia Landfill Site Pilot-

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